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5 Attorneys for Plaintiff,
6 Lycurgan, Inc.

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LYCURGAN, INC. d/b/a ARES
ARMOR,

12 Plaintiff,

13 v.

14 B. TODD JONES, in his official
capacity as Head of the San Diego
Bureau of Alcohol, Tobacco,
15 Firearms and Explosives; and
DOES 1-10,

16 Defendants.

CASE NO. 14-CV-1679 JLS (BGS)

**DECLARATION OF SCOTT A.
McMILLAN IN SUPPORT OF PLAINTIFF
LYCURGAN, INC.'S MOTION FOR NEW
TRIAL**

Judge: Hon. Janis L. Sammartino
Dept.: 4A
Date: March 5, 2015
Time: 1:30 p.m.

17
18 **DECLARATION OF SCOTT A. McMILLAN**

19
20 I, Scott A. McMillan, declare as follows:

21 1. I am counsel for Plaintiff Lycurgan, Inc. ("Lycurgan") in the above captioned
22 case, and if called before this court or any other court I could and would testify
23 competently to the following from my own personal knowledge, except as to those
24 matters I state on information and belief, and as to those matters I believe them to be
25 true.

26 2. This declaration is made in support of Lycurgan's motion for new trial.

27 3. Dimitrios Karras ("Mr. Karras") is the Chief Executive Officer of Lycurgan, a
28 California corporation d/b/a Ares Armor. Lycurgan is a small retail business with four

1 locations: three in Oceanside, California and one in National City, California. In
2 addition, it operates a website (www.aresarmor.com). Lycurgan sells gun parts, holsters,
3 cases, apparel, and backpacks, and a product known as an 80% AR-15 lower receiver.
4 An 80% lower is an industry term for an unfinished receiver, which is not a firearm
5 according to prior determinations from the Bureau of Alcohol, Tobacco, Firearms and
6 Explosives ("ATF"). Therefore, 80% lowers do not require a federal firearms license
7 and are not regulated under the Gun Control Act of 1968.

8 4. On March 15, 2014, Defendant United States ("Government") executed a
9 search warrant against Lycurgan's four separate business properties. I, along with some
10 of my colleagues, went to Lycurgan's Oceanside properties to observe the raid. During
11 its search, the ATF seized and carried away a large number of polymer castings, among a
12 multitude of other items that are necessary for the efficient functioning of the business.

13 5. On March 27, 2014, the ATF mailed Lycurgan a "NOTICE OF SEIZURE
14 AND ADMINISTRATIVE FORFEITURE PROCEEDING," which provided: "The
15 above-described property was seized by the Bureau of Alcohol, Tobacco, Firearms and
16 Explosives (ATF) for forfeiture pursuant to **Title 18, United States Code (U.S.C.),**
17 **Section 3051(c), 19 U.S.C., Sections 1602-1618, 28 C.F.R., Part 8, 18 U.S.C., Section**
18 **983 and/or 21 U.S.C., Section 881.**" The forfeiture notice incorrectly describes the
19 seized items as "5,804 Unknown Manufacturer AR Type Receiver/Frame CAL:
20 Unknown SN: None." Such items are the property of Lycurgan in fee simple absolute.
21 And they are not "AR Type Receiver/Frame." The items are not "receivers" or "frames"
22 as such words are defined in the Gun Control Act of 1968, or prior interpretative
23 determinations of the ATF under such Act.

24 6. On April 5, 2014, I served a verified claim on behalf of Lycurgan, contesting
25 the forfeiture and requesting the initiation of a judicial proceeding to challenge such
26 forfeiture.

27 7. On June 11, 2014, I filed a motion on Lycurgan's behalf to unseal the search
28

1 warrant affidavit (“Motion to Unseal”). Lycurgan proffered several reasons why it
2 needed to inspect the affidavit. Among the reasons was to enable Lycurgan to
3 adequately challenge the civil forfeiture that the ATF had initiated on March 27, 2014.

4 8. On July 3, 2014, the ATF sent Lycurgan a letter that provided: “The United
5 States Department of Justice will not pursue the civil forfeiture of the asset described
6 above. However, the United States Department of Justice will retain the seized property
7 as evidence in its ongoing criminal investigation.” On July 10, 2014, the Government
8 filed an opposition to Lycurgan’s Motion to Unseal, arguing that the withdrawal of the
9 civil forfeiture mooted the Motion to Unseal.

10 9. On July 16, 2014, Lycurgan filed this instant action under the Civil Asset
11 Forfeiture Reform Act (“CAFRA”) because the Government’s time to file a civil
12 forfeiture complaint lapsed pursuant to 18 U.S.C. section 983(a)(3)(A). On September
13 22, 2014, the Government moved to dismiss the case on the basis that the Government’s
14 termination of the civil forfeiture deprived this Court of subject matter jurisdiction. On
15 December 17, 2014, the Court granted the Government’s motion. The Court’s order
16 dismissing this action did not, and could not, consider the new evidence that the ATF no
17 longer needs to retain Lycurgan’s property in its criminal investigation. The Court held
18 that the Government properly retained Lycurgan’s property, despite the termination of
19 the civil forfeiture, because the property was needed as evidence in an ongoing criminal
20 investigation.

21 ///

22 ///

23 ///

11. On January 14, 2015, my office submitted a letter “requesting return” of Lycurgan’s property. A true and correct copy of the letter is attached hereto as **Exhibit “D.”** To date, Lycurgan’s property has not been returned.

/s/ Scott A. McMillan

DECLARATION OF SCOTT A. McMILLAN

EXHIBIT A



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Date: Dec 23, 2014

TO: Ares Armor
208 North Freeman Street
Oceanside, CA 92054

NOTICE

The Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, makes it unlawful for any person except for a Federal firearms licensee to engage in the business of dealing in firearms. 18 U.S.C. § 922(a)(1)(A). The GCA defines the term "firearm" to include any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; or the frame or receiver of any such weapon. 18 U.S.C. § 921(a)(3). The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the agency charged with the administration and enforcement of the GCA.

ATF has classified the "EP-80" lower firearm receiver manufactured by EP Arms, LLC, as a firearm for purposes of the GCA. As part of a criminal investigation into the unlawful manufacture and distribution of firearms, ATF seized 5,804 EP-80 lower firearm receivers from Ares Armor pursuant to a Federal search warrant on March 15, 2014. The United States has recently determined that the EP-80 lower firearm receivers seized at that time are no longer needed as evidence in its criminal investigation. Accordingly, it is returning those firearms to Ares Armor.

This letter serves to advise you that all Federal and State firearms laws apply to the subject EP-80 lower firearm receivers. If you plan to engage in the business of dealing firearms, the GCA requires you to obtain a Federal firearms license. 18 U.S.C. § 923(a). You may obtain an application for a Federal firearms license at www.atf.gov or by calling your local ATF office. You may also work with a federal Firearms Licensee to lawfully sell or dispose of these firearms. Our examination of these firearms also reveals that they were never properly marked by the manufacturer in accordance with 18 U.S.C. § 923(i) and 27 C.F.R. § 478.92(a)(1). That deficiency must be corrected by the manufacturer before they may be sold.

- 2 -

NOTICE

Notice Served

by:

Special Agent, ATF:

Matthew J. Croff Rice

Date:

12/23/2014

Location:

5901 Pinesly Dr #304

Carlsbad, CA 92008

Witnessed by:

Special Agent, ATF:

A. N. 2 / J. PAC

Date:

12/23/14

I hereby acknowledge receipt of this Notice:

Recipient's Name (Printed):

Scott H. A. McMiller, Esq.

Attorney for
Lyonson

Recipient's Signature:

[Signature]

Date Signed by Recipient:

12/23/14

EXHIBIT B

U.S. Department of Justice


Bureau of Alcohol, Tobacco, Firearms and Explosives

Release and Receipt of Property

To: Geoff Rice, San Diego IV Field Office	Investigation Number 784090-13-0011	Date 12/17/2014
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Property Description

<input checked="" type="checkbox"/>	Item Number	Description
<input checked="" type="checkbox"/>	000010	FIREARM: RIFLE, MNF: UNKNOWN MANUFACTURER, TYPE: RECEIVER/FRAME, MODEL: UNKNOWN TYPE, CAL: ZZ, SN: NONE 5,786 total

 1649513

Location: IN AGENT POSSESSION

You are hereby authorized to release the above-described property to: (Name and address).

Scott McMillan esq. 4070 Nebo Drive, #200 La Mesa CA 91941

Storage costs for this property from to will be paid by The Bureau of Alcohol, Tobacco, Firearms and Explosives. The recipient of the property will be responsible for all storage charges incurred by the property after . Please furnish this office with the original and 3 copies of this form upon execution of same, and furnish one copy to the property recipient.

Signature Armando Hernandez	Title Resident Agent in Charge, San Diego IV Field Office
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Release

I hereby certify that on December 23, 20 14, I released this property as shown below.

Signature <u>MA Ricci</u>	Title <u>Special Agent</u>	Firm Represented (If any)
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Receipt

I hereby acknowledge receipt of this property on December 23, 20 14 from, (Name of releasing firm or government agency):

Signature <u>Geoff Rice</u>	Title <u>Lawyer for - Lyncor, Inc</u>	Person, Firm or Governmental Agency Represented <u>Lyncor, Inc.</u>
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* Do not adjust the description or character of defined correctly. Admit the count is correct.

Box Number	Total	Ares Armor Initial	ATF Initial	
1	160	to	GAR	Marked 160
2	150	to	AM	Marked 150
3	150	to	GAR	Marked 152 *
4	150	to	AM	
5	149	to	AM	Marked 149
6	150	to	AM	Marked 150
7	150	to	AM	Marked 150
8	80	to	AM	Marked 80
9	150	to	AM	Marked 150
10	50	to	AM	Marked 150
11	50	to	AM	Marked 150
12	50	to	GAR	Marked 150
13	150	to	GM	Marked 150
14	150	to	AM	Marked 150
15	150	to	AM	Marked 150
16	150	to	AM	Marked 150
17	149	to	AM	Marked 151 *
18	150	to	AM	Marked 150
19	150	to	AM	Marked 150
20	140	to	GAR	Marked 140
21	150	to	GAR	Marked 150
22	150	to	GAR	Marked 150
23	70	to	AM	Marked 70
24	70	to	AM	Marked 70
25	100	to	GAR	Marked 100
26	98	to	GAR	Marked 98
27	100	to	GAR	Marked 100
28	100	to	AM	Marked 100
29	60	to	AM	Marked 60
30	90	to	AM	Marked 90
31	50	to	GAR	Marked 54 *
32	61	to	GAR	Marked 61
33	70	to	AM	Marked 70
34	89	to	GAR	Marked 90 *
35	88	to	AM	Marked 90 *
36	90	to	AM	Marked 90
37	92	to	GAR	Marked 90 * (overage)
38	67	to	AM	Marked 67
39	90	to	GAR	Marked 90
40	89	to	AM	Marked 89
41	80	to	AM	Marked 80
42	58	to	GAR	Marked 58
43	120	to	GAR	Marked 130 *
44	90	to	GAR	Marked 90
45	90	to	AM	Marked 90
46	70	to	GAR	Marked 70

47	91	ho	can	Marked 90 * (outrage)
48	90	ho	can	Marked 90
49	90	ho	can	Marked 90
50	90	ho	can	Marked 90
51	90	ho	can	Marked 90
52	66	ho	can	Marked 66
53	50	ho	can	Marked 50
54	9	ho	can	Marked 9 (Bag)
55	5,786 total			
56				
57				
58				
59				
60				
61				
62				
63				
64				
65				

EXHIBIT C

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Fax. 206-600-5095

5 Attorneys for Petitioner,
6 Lycurgan, Inc.

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9
10 LYCURGAN, INC., a California
corporation, d/b/a Ares Armor,

11 Plaintiff,

12 vs.

13 TODD JONES, in his official
14 capacity as Director of the
Bureau of Alcohol, Tobacco, and
15 Firearms Enforcement.

16 Defendant.

Case No.: 14-CV-1679 JAH JLB

[PROPOSED] AMENDED COMPLAINT
FOR EQUITABLE RELIEF, or in the
alternative FOR DAMAGES, and FOR
ATTORNEYS FEES ACCORDING 28
U.S.C. §2465(b)(1)(A); DEMAND FOR
JURY TRIAL.

17 Plaintiff LYCURGAN, INC., a California corporation, d/b/a Ares Armor
18 alleges:

19 **JURISDICTION**

20 1. This Court has jurisdiction under Title 28, United States Code, Section
21 1331 because this matter is a civil action arising under the Constitution, laws, or
22 treaties of the United States.

23 **VENUE**

24 2. Venue is proper in the Southern District of California pursuant to Title
25 28, United States Code, Section 1391(e)(1)(B), because a substantial part of the
26 events or omissions giving rise to the claim occurred in this district.
27
28

1 **PARTIES**

2 3. Plaintiff LYCURGAN, INC., a California corporation, is a corporation
3 which does business in San Diego County, California, under the fictitious business
4 name of "Ares Armor."

5 4. Defendant TODD JONES, is the current Director of the Bureau of
6 Alcohol, Tobacco, Firearms and Explosives ("BATFE"), a subdivision of the
7 Department of Justice, and this suit is brought against him in his official capacity.

8 5. Plaintiff Lycurgan is informed and believes that the subject seized
9 property is presently held within the jurisdiction of this Court.

10 **FIRST CLAIM FOR RELIEF**

11 **RETURN OF PROPERTY PURSUANT TO 18 USC § 983**

12 6. On March 15, 2014 heavily armed personnel of the BATFE entered the
13 premises located at 180 Roymar Street, Oceanside, California. Those personnel
14 conducted a search. During the course of the search the persons took
15 approximately 5,804 unfinished polymer parts otherwise known as "unfinished
16 polymer lower receivers."

17 7. Plaintiff is the owner of the 5,804 unfinished polymer parts.

18 8. Such 5,804 unfinished polymer parts are not "contraband" or "other
19 property that the person from whom the property was seized may not legally
20 possess" as such terms are used within the meaning of 18 U.S.C. § 983(a)(1)(F).
21 Nor are such 5,804 unfinished polymer parts "contraband" or "other property that
22 is illegal to possess" as such terms are used within the meaning of 18 U.S.C. §
23 983(d).

24 9. On March 27, 2014, the BATFE purported to give notice of seizure and
25 administrative forfeiture proceedings of 5,804 unfinished polymer parts otherwise
26 known as "unfinished polymer lower receivers." ("Notice") The BATFE referred
27 to the proceeding as ATF Case Number: 784090-13-0011-01, Asset ID:
28 14-ATF-009592. Without admitting the truth of any facts asserted in said notice,

1 most of which are specifically contested, a copy of said Notice is attached hereto
2 as Exhibit A.

3 10. The unfinished polymer parts are neither firearms, firearms receivers, or
4 firearms frames as such words are defined in the Gun Control Act of 1968 or prior
5 interpretative determination of the BATFE under the Act, e.g., 18 USC §
6 921(a)(3).

7 11. On April 5, 2014, Plaintiff submitted a Verified Claim, attached hereto
8 as Exhibit 'B.' Said Verified Claim was placed in the United States Mail, with
9 postage paid for Express Mail delivery, return receipt requested. A true and
10 correct copy of the postal tracking transcript reflecting delivery to the Forfeiture
11 Counsel, Asset Forfeiture and Seized Property Division, Bureau of Alcohol,
12 Tobacco, Firearms and Explosives, 99 New York Avenue, NE, Mail Stop 3N600,
13 Washington, DC 20226, on April 9, 2014, is attached hereto as Exhibit C.

14 12. On July 3, 2014, the BATFE executed a statement that it would not be
15 instituting Civil Forfeiture Proceedings. A copy of that statement is attached
16 hereto as Exhibit D.

17 13. On July 9, 2014, Plaintiff through its attorney of record made written
18 request for the release of the subject unfinished polymer parts to Assistant United
19 States Attorney assigned to a related action currently pending in this court entitled
20 *Lycurgan, Inc., d/b/a Ares Armor, Petitioner v. Bureau of Alcohol, Tobacco,*
21 *Firearms and Explosives, Respondent (In the Matter of the Search of: Ares Armor,*
22 *206/208 N Freeman St, Oceanside; Ares Armor, 416 National City Blvd; Ares*
23 *Armor Warehouse, 180 Roymar St D; and 2420 Industry, Oceanside, CA), So.*
24 Dist. Cal. Case No. 14-cv-1424-JLS.

25 14. On July 10, 2014, the United States Attorney's office stated in an
26 opposition filed within a related action currently pending in this court opposing
27 the disclosure of the affidavit which accompanied the request for the search
28 warrant issued to effect the March 15, 2014 raid on Plaintiff's facilities, e.g.,

1 *Lycurgan, Inc., d/b/a Ares Armor, Petitioner v. Bureau of Alcohol, Tobacco,*
 2 *Firearms and Explosives, Respondent (In the Matter of the Search of: Ares Armor,*
 3 *206/208 N Freeman St, Oceanside; Ares Armor, 416 National City Blvd; Ares*
 4 *Armor Warehouse, 180 Roymar St D; and 2420 Industry, Oceanside, CA), So.*
 5 Dist. Cal. Case No. 14-cv-1424-JLS, that:

6 “[i]n this case, there is an ongoing criminal investigation that is still
 7 in the early stage of its proceedings. Gov. Exh. 4. To date, ***an***
 8 ***indictment has not been sought or obtained . . .***”

9 [Case 14-cv-1424-JLS; Docket 8, page 9 (*emphasis added.*)]

10 15. Defendant’s time to initiate forfeiture proceedings have *lapsed* pursuant
 11 to 18 U.S.C. 983(a)(3)(A), which provides:

12 “Not later than 90 days after a claim has been filed, the Government
 13 shall file a complaint for forfeiture in the manner set forth in the
 14 Supplemental Rules for Certain Admiralty and Maritime Claims or
 15 return the property pending the filing of a complaint . . .”

16 16. Based on information and belief and in reliance on the statements made
 17 by a United States Government representative on July 10, 2014 as set forth in ¶ 14,
 18 above, the Government has not “obtained a criminal indictment containing an
 19 allegation that the property is subject to forfeiture; and . . . take the steps necessary
 20 to preserve its right to maintain custody of the property as provided in the
 21 applicable criminal forfeiture statute. . .” according to the requirements of 18
 22 U.S.C. 983(a)(3)(B), and within the 90 days of the filing of Plaintiff’s claim.

23 17. On December 23, 2014, the BATFE notified Plaintiff: “The United
 24 States has recently determined that the EP-80 lower firearm receivers seized [on
 25 March 15, 2014] are no longer needed as evidence in its criminal investigation.
 26 Accordingly, it is returning those firearms to Ares Armor.” A copy of that Notice
 27 is attached hereto as Exhibit E.

28 18. On December 23, 2014, the BATFE returned a total of 5,786 unfinished

1 polymer lower receivers to Plaintiff. Accordingly, the Plaintiff is still without 18
2 of its seized unfinished polymer lower receivers.

3 19. On January 14, 2015, Plaintiff sent a letter to the BATFE, requesting
4 the return of Plaintiff's 18 unfinished polymer lower receivers. A copy of the
5 letter is attached hereto as Exhibit F. The request explained why Plaintiff is
6 entitled to the immediate release of his unreturned items, pursuant to 18 U.S.C. §§
7 983(f)(1)-(2). Plaintiff has not received the requested property to date.

8 20. Plaintiff is entitled to the immediate release of the subject property,
9 pursuant to 18 U.S.C. § 983(f)(1) if:

10 "(A) the claimant has a possessory interest in the property;

11 (B) the claimant has sufficient ties to the community to provide
12 assurance that the property will be available at the time of the trial;

13 (C) the continued possession by the Government pending the final
14 disposition of forfeiture proceedings will cause substantial hardship
15 to the claimant, such as preventing the functioning of a business,
16 preventing an individual from working, or leaving an individual
17 homeless;

18 (D) the claimant's likely hardship from the continued possession
19 by the Government of the seized property outweighs the risk that the
20 property will be destroyed, damaged, lost, concealed, or transferred if
21 it is returned to the claimant during the pendency of the proceeding;
22 and

23 (E) none of the conditions set forth in paragraph (8) applies."

24 Plaintiff (A) owns the seized property, (B) has sufficient ties to the community to
25 provide assurance that the property will be available at the time of the trial, (C) has
26 been and will continue to suffer substantial hardship and financial loss if the
27 Government continues to retain its property, and (D) this hardship outweighs the
28 risk that the seized property will be lost because the Government has already had

1 nearly a year to examine the property, and lastly (E) the seized property is not
2 contraband.

3 21. Wherefore, Plaintiff is entitled to a release of the subject property, or in
4 the alternative, for the monetary value of such unreturned items computed at the
5 value of \$99 each. Plaintiff is entitled to an award of attorneys fees according to
6 28 U.S.C. § 2465(b)(1)(A), plus costs and interest.

7 **PRAYER**

8 Plaintiff Lycurgan, Inc. prays:

9 A. That the Court command Defendant to release the 18 unreturned
10 subject items referenced in ATF Case Number: 784090-13-0011-01, Asset ID:
11 14-ATF-009592, forthwith and without delay.

12 B. That the Court award attorneys fees, costs, and interests according to
13 28 U.S.C. § 2465(b)(1)(A).

14 C. That the Court award such other relief that is meet and proper.

15 Respectfully submitted,

16 The McMillan Law Firm, APC

17 Dated:

18
19
20 _____
21 Scott A. McMillan
22 Attorneys for Lycurgan, Inc.
23 Plaintiff
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff Lycurgan, Inc., demands a jury trial on all matters so determinable.

Respectfully submitted,

The McMillan Law Firm, APC

Dated:

Scott A. McMillan
Attorneys for Lycurgan, Inc.
Plaintiff

EXHIBIT D

THE McMILLAN LAW FIRM

Scott A. McMillan
Michelle D. Volk
Sean E. Smith

A PROFESSIONAL CORPORATION
4670 Nebo Drive, Suite 200
La Mesa, CA 91941-5230

Tel: (619) 464-1500
Fax: (206) 600-5095

All lawyers licensed to practice in California.

January 14, 2015

Geoffrey Rice, Special Agent
Bureau of Alcohol, Tobacco, Firearms and Explosives
5901 Priestly Dr., No. 304
Carlsbad, CA 92008

Re: Request for release of property

Dear Special Agent Rice:

As you will recall, you served my client, Lycurgan, Inc. ("Lycurgan"), d/b/a Ares Armor, a Notice on December 23, 2014 that provided: "The United States has recently determined that the EP-80 lower firearm receivers seized [on March 15, 2014] are no longer needed as evidence in its criminal investigation. Accordingly, it is returning those firearms to Ares Armor." A copy of the Notice is attached to this letter.

On December 23, 2014, Scott McMillan, Esq. from my office and Dimitrios Karras, CEO of Lycurgan, met with you and other ATF agents for the purpose of recovering Lycurgan's seized 5,804 unfinished polymer lower receivers. After meticulously counting each of the returned items, the ATF determined that it released only 5,786 unfinished polymer lower receivers. A copy of the Release and Receipt of Property is attached to this letter. Accordingly, the ATF retained 18 of Lycurgan's seized items.

This letter serves as a request, in accordance with 18 U.S.C. § 983(f)(2), for the release and return of Lycurgan's 18 unfinished polymer lower receivers that remain in the ATF's custody, control and/or possession. Lycurgan is entitled to immediate release of his seized property if:

- (A) the claimant has a possessory interest in the property;
- (B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
- (C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;
- (D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and
- (E) none of the conditions set forth in paragraph (8) applies.

(18 U.S.C. § 983(f)(1).)

Lycurgan satisfies all of the aforementioned elements. Lycurgan (A) owns the seized property and (B) has sufficient ties to the community to provide assurance that the property will be available at the time of the trial, (C) has been and will continue to suffer substantial hardship and financial loss if the Government continues to retain its property, and (D) this hardship outweighs the risk that the seized property will be lost because the Government has already had nearly a year to examine the property, and lastly (E) the seized property is not contraband according to the ATF's prior determinations, Lycurgan's retained expert witness who is a former and longtime ATF agent, and supported by the ATF's release of Lycurgan's 5,786 unfinished polymer lower receivers.

I look forward to your prompt response. If you decline to return Lycurgan's property, we will file a petition in district court for the release of Lycurgan's property, pursuant to 18 U.S.C. § 983(f)(3).

Sincerely,



Sean E. Smith, Esq.

cc:

Daniel E. Butcher, Esq.
Andrew R. Haden, Esq.
Assistant U.S. Attorneys
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Daniel.Butcher@usdoj.gov